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In re Application of
Novin, et al.
Application No. 10/780,187
Filed: February 17, 2004
Attorney Docket No. 2005-259
For: FLAT PANEL DISPLAY TILT AND
SWIVEL MECHANISM

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition, filed August 3, 2009, captioned under CFR 1.183, which will be treated as a petition requesting waiver of 37 CFR 1.63 and 1.67, which requires all of the joint inventors to execute a supplemental declaration.

The petition under 37 CFR 1.183 to waive 37 CFR 1.63 and 1.67 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.183 to waive 37 CFR 1.63 and 1.67" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

While this waiver petition is not a petition under 37 CFR 1.47, it is evaluated in much the same way a Rule 47 petition is. Therefore, a grantable petition requires:

- (1) a petition including proof of the pertinent facts establishing that the joint inventor(s) refuses to join, or cannot be found or reached after diligent effort,
- (2) a proper oath or Declaration executed by the available joint inventor(s),
- (3) a petition fee, and
- (4) the last known address of the omitted inventor(s).

This petition lacks item (1).

With respect to item (1), applicant has failed to establish that the non-signing inventor, David A. Lowry, has refused to execute the supplemental declaration or cannot be located. A successful petition requires either (1) a clear refusal to join, whether expressly or by conduct, or (2) a showing

of diligence in trying to find an unavailable inventor. The proof of the pertinent events should be made by a statement of someone with first hand knowledge of the events.

Ms. Diane Cimino states that she mailed a copy of the papers requiring review and execution by Mr. Lowry to his last known address and she asked that he sign them and return them. Ms. Cimino states that no response was received as of August 3, 2009.

If it is concluded by the 37 CFR 1.47 applicant that a non-signing inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in an affidavit or declaration. **If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence should be submitted** MPEP 409.03(d).

The Office requires petitioner to submit a copy of the June 9, 2009 cover letter of instructions that accompanied the application and papers for Mr. Lowry's execution. A finding of refusal by conduct is possible. However, it is most frequently established when the cover letter of instructions includes a deadline or a statement that no response will constitute a refusal. This sort of ultimatum lends support to a finding of refusal by conduct.

In addition, please confirm that the June 9, 2009 mailing was not returned to sender.

If the mailing was returned, then other attempts to reach Mr. Lowry should be made. - e.g. through e-mail, computer searches (such as LEXIS), or telephone searches. If those efforts fail, then petitioner will establish that the inventor cannot be reached. *Documentary evidence* that supports a finding that the non-signing inventor could not be found or reached should be made part of any affidavits or declarations that fully describe the exact facts which are relied on to establish that a diligent effort was made to locate the non-signing inventor. Printed computer records of Internet searches would suffice. *See* MPEP 409.03(d).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By FAX: (571) 273-8300 - ATTN: Office of Petitions

Telephone inquiries should be directed to the undersigned at (571) 272-3230.

A handwritten signature in black ink, reading "Shirene Willis Brantley". The signature is written in a cursive, flowing style.

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions